Comité consultatif pour l'environnement de la Baie James
James Bay Advisory Committee on the Environment
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Annual Report 2014-2015

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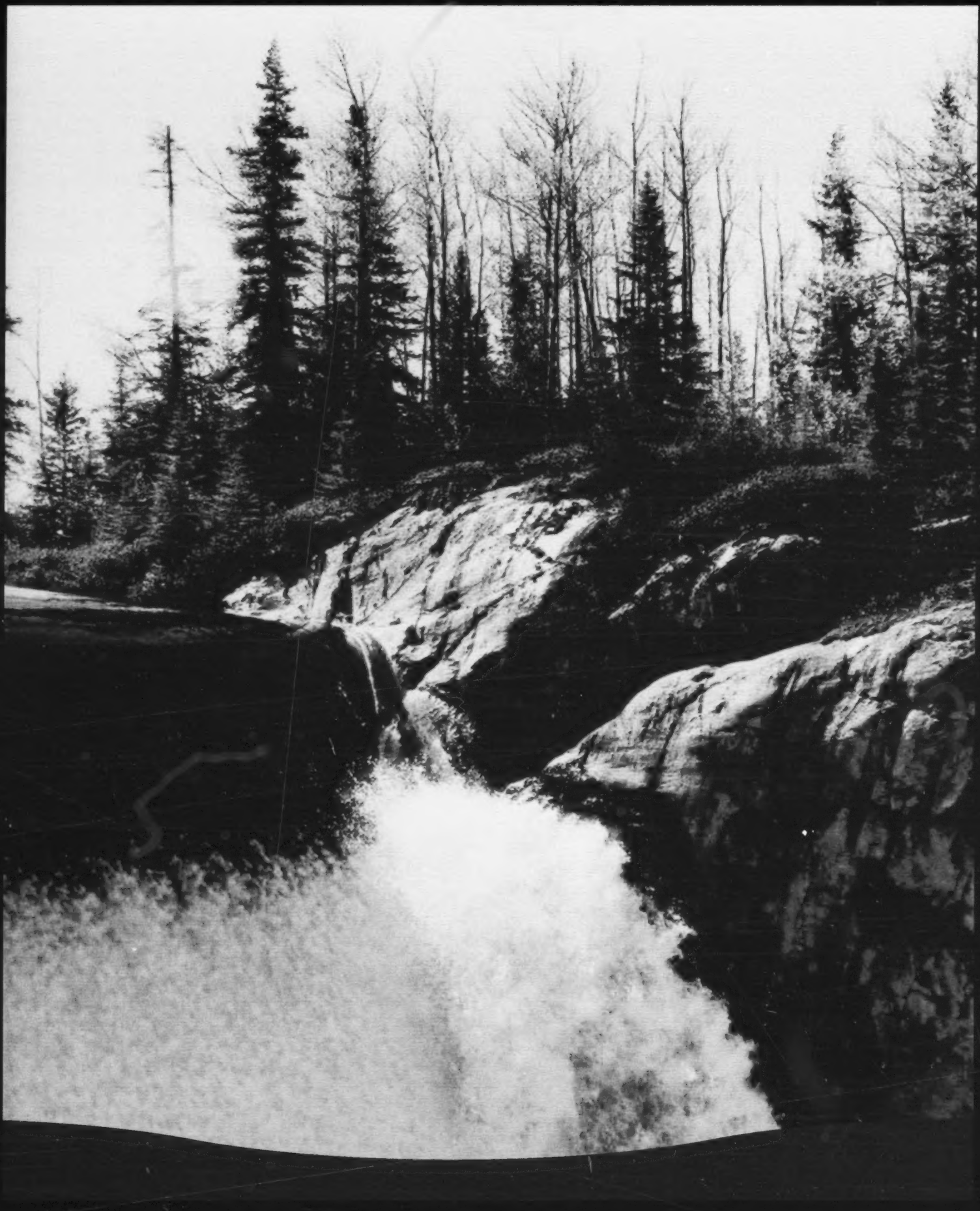

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March 31, 2015

The Honourable Leona Aglukkaq
Minister of the Environment of Canada

The Honourable David Heurtel
Minister of Sustainable Development, the Environment
and the Fight Against Climate Change

Dr. Matthew Coon Come
Grand Chief
Grand Council of the Crees (Eeyou Istchee)

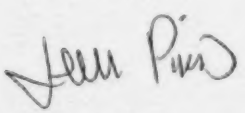
Ministers Aglukkaq and Heurtel:

Grand Chief Coon Come:

I am pleased to send you the activity report of the James Bay Advisory Committee on the Environment for the year ended March 31, 2015.

Yours truly,

Jean Picard



Chairman

MESSAGE FROM THE CHAIRMAN

It gives me great pleasure to submit the James Bay Advisory Committee on the Environment (JBACE) Annual Report 2014-2015.

This is the second annual report in the implementation of the Advisory Committee's Strategic Plan 2013-2018, which aims to better target the JBACE's action to make it more effective.

It is gratifying to see the tangible results of our work. In addition to the efforts made to implement the objectives we set ourselves, we were involved in the Bureau d'audiences publiques sur l'environnement (BAPE) generic hearing on uranium industry issues, a landmark event in the James Bay Territory. The JBACE worked in concert with the BAPE throughout the process to ensure that due consideration was given to the rights guaranteed to the Cree inhabitants of the territory covered by Section 22 of the James Bay and Northern Québec Agreement (JBNQA). Although challenging at times, the partnership proved crucial to adapting the consultations to the context of the Territory's communities.

I am especially proud of the strong participation by JBACE staff, members and commissioners, particularly in the case of a sensitive issue such as uranium development.

Access to information, transparency and public participation guided all of the JBACE's work in 2014-2015.

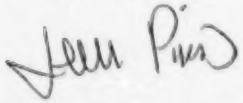
More specifically, the JBACE was able to submit its report on the handling of mineral exploration projects under the impact assessment and review procedure. The report was the culmination of years of effort involving the participation, on the subcommittee, of several representatives from the Ministère des Ressources naturelles du Québec, Environment Canada and the Cree Nation Government. The JBACE's recommendations target more transparent and effective handling of the numerous exploration projects carried out in the Territory.

In addition, a JBACE subcommittee examined public participation in the impact assessment and review procedure with the aim of ensuring that the rights under the JBNQA are respected. It was with great satisfaction that the subcommittee formulated recommendations for improving this aspect of the environmental and social protection regime.

The successful experiences highlighted in this report are just a few examples illustrating the commitment of JBACE staff and members and our partners to protecting the environment and social milieu in the Eeyou Istchee James Bay territory.

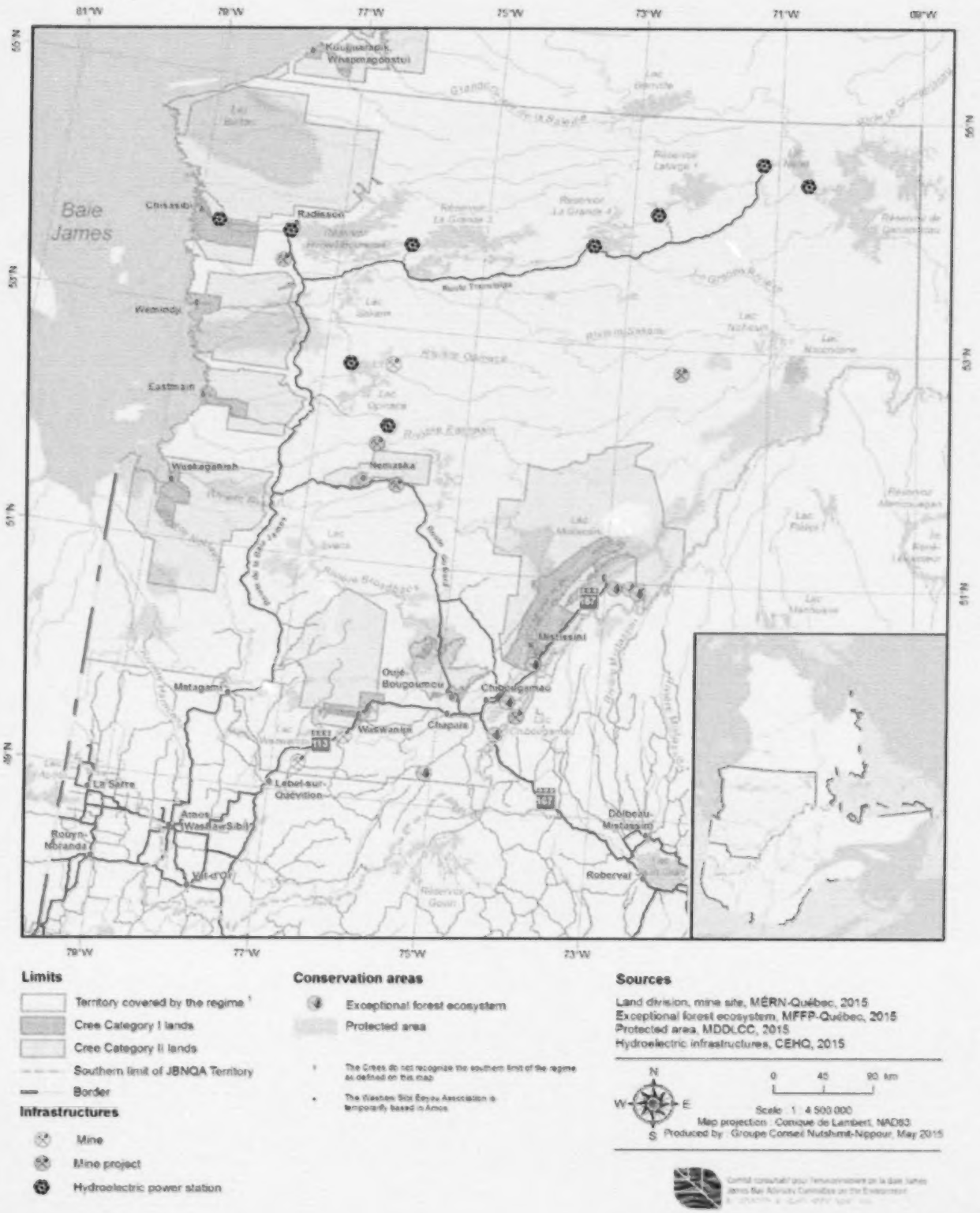
In my opinion, these major issues are shining examples of the type of collaboration required to implement the JBNQA's environmental and social protection regime. The signatory parties to the JBNQA agreed on the principles, terms and conditions of the regime, but implementing the regime necessitates solutions tailored to each issue in order to make these principles a reality.

These unique challenges, added to the JBACE's regular mandates, led to a greater workload in terms of Committee meetings, subcommittee meetings and analyses and support from the secretariat. My thanks to our members, employees and collaborators for their commitment throughout this very busy year.



Le président,
Jean Picard, M.A.T.D.R.
Le 31 mars 2015

Territory Covered by the Environmental and Social Protection Regime (Section 22)



INTRODUCTION

The James Bay and Northern Québec Agreement (JBNQA) is considered to be Canada's first modern treaty between governments and Aboriginal nations. Signed in 1975, it provides for, among other things, a hunting, fishing and trapping regime to ensure the continuance of the traditional pursuits of Native people.

However, protection of the right to harvest wildlife demands protection of the living environment of the Crees and the animals upon which they depend. The JBNQA established an environmental and social protection regime for that purpose (under Section 22, which covers the James Bay Territory). One of the principles underpinning the regime is recognition of the Crees' special relationship with the environment.

The role of the JBACE consists in examining policies, laws and regulations to make sure they are consistent with the provisions of the Section 22 environmental and social protection regime. The JBACE is also responsible for overseeing the administration of the impact assessment and review procedure for development projects.[1]

The JBACE adopted a five-year strategic plan for 2013-2018 and an action plan to implement it. This report highlights the main achievements during 2014-2015 based on the priorities set by the Committee. Work on a number of initiatives will continue in the coming years.

1 INQUIRY AND PUBLIC HEARING ON URANIUM INDUSTRY ISSUES IN QUÉBEC

Uranium development in the James Bay Territory (hereinafter the "Territory") sparked strong reactions among the Crees when an advanced exploration project was planned on a trapline in the community of Mistissini. The Territory harbours significant uranium mineralization and development of this industry is of major concern to the region's Cree population.

1. Full information on projects submitted to the evaluating and review bodies during fiscal 2014-2015 is available on the following websites:
   - Provincial Review Committee (COMEX): http://comexqc.ca/
   - Federal Review Panel (COFEX-South): http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=258F8153-1
   - Evaluating Committee: http://www.mddelcc.gouv.qc.ca/evaluations/comev.htm

With similar concerns being expressed elsewhere in Québec, the government mandated the Bureau d'audiences publiques en environnement (BAPE) to conduct a "generic" inquiry and hearing on uranium industry issues in Québec.

A) **Establishment of a BAPE-JBACE partnership**

The Crees called on the Minister of Sustainable Development, the Environment and the Fight Against Climate Change to make special arrangements for the territory covered by Section 22. Discussions ensued to determine the ways and means of carrying out BAPE's mandate in the Territory.

In February 2014, the two parties signed an agreement to, firstly, ensure that the rights and special involvement guaranteed to the Crees under the JBNQA were respected and, secondly, enable the BAPE Commission to carry out its mandate throughout Québec. In the Territory, the BAPE Commission worked collaboratively with a special commission of the JBACE created for that purpose owing to the JBACE's role as "the preferential and official forum for responsible governments" concerning the formulation of policies, laws and regulations.

The JBACE Commission was created to conduct an inquiry and hearings on issues related to uranium development in the Territory or affecting the Territory.[2] Its first mandate was to sign a protocol with the BAPE Commission on the conduct of the inquiry and consultations within the Territory. The respective commission chairs signed the protocol in May 2014 with a view to joining forces to ensure adequate consultations in the Territory. The protocol provided for three different consultation phases, each one held in three communities: Chisasibi, Chibougamau and Mistissini.

The collaboration between the JBACE and the BAPE, through their respective commissions, entailed months of sustained effort. Thanks to special funding from the federal government, the JBACE was able to hire an expert to support its commission throughout the process and help compile and highlight the opinions expressed by the local population during the hearings. The JBACE delegation provided valuable expertise regarding the ways and means of holding hearings and dealing with the issues.

2. See Appendix 1 for the Commission's composition. The Kativik Environmental Advisory Committee (KEAC) set up a similar commission for the territory of Nunavik.

STRATEGIC DIRECTIONS AND PRIORITIES

As part of its strategic planning for 2013-2018, the JBACE defined specific priorities for fiscal 2014-2015. Some of the work, such as the inquiry on uranium industry issues, public participation and the information exchange program related to the 2012 Fisheries Act, have been largely completed. Other objectives, however, such as a study of the cumulative impacts of development, have been deferred to the coming fiscal year due to a lack of time.

B) **Inquiry and public hearing**

The BAPE and JBACE commissions started by holding a "pre-consultation" phase in Chisasibi, Chibougamau and Mistissini in June 2014. The hearings allowed the Territory's inhabitants, Cree and Jamesian alike, to voice their concerns and ask questions. In September 2014, the commissions held public thematic sessions in Mistissini,[3] giving participants an opportunity to put their questions to guest experts. During the final phase, in November 2014, oral and written submissions were presented during public hearings in Chisasibi, Chibougamau and Mistissini.

In the Cree communities, several participants began by questioning the merits of the consultation, having already expressed their disagreement during the review of the Matoush mineral exploration project in 2010. Others emphasized the dark history of mining in the Territory as the reason for the loss of confidence. The Crees feel that understanding their way of life is crucial to assessing the impacts of uranium development, particularly its impacts on water and wildlife.

Jamesians, for their part, generally had a more positive view of uranium development. However, they thought it was important to better inform the public about the health effects of uranium, particularly on miners' health, and the planned emergency measures.

Despite the challenges of organizing hearings in a remote region, the high participation rate testified to the public interest in this issue. Moreover, videoconferences and webcasts facilitated participation by residents of communities where no hearings were held.

3 Simultaneous videoconferences were held in Chisasibi and Chibougamau.

C) **Workshop on social acceptability**

Social acceptability turned out to be a vital issue during the review of a previous uranium exploration project, as well as during the BAPE and JBACE commissions' consultations in the Territory. To better understand the concept of social acceptability, the JBACE invited an expert to lead a workshop to familiarize JBACE members with the complexities of the issue so that they would be better equipped to make representations to government bodies. The workshop, which was held on January 9, 2015, highlighted the interactive nature of all social acceptability processes. In sum, social acceptability is not a fixed concept and must constantly be renewed. Making sure a project remains socially acceptable demands ongoing effort.

Participants were also reminded of the importance of strategic issues. In some cases, public opposition to a project stems from the implementation strategy for that industry, rather than from the project itself. It is a significant issue in the Territory given that there is no land use plan for James Bay.[4]

D) **BAPE report**

The protocol binding the BAPE and JBACE commissions provided that the JBACE Commission could write its own report, which would be published along with the main BAPE report. However, the commissions agreed to publish a single report with consensus on aspects related to the James Bay Territory. The BAPE is to submit its report containing advice and recommendations in May 2015. The report will include a separate chapter dealing with the JBNQA territory written by the JBACE and KEAC commissions.

2 HANDLING OF MINERAL EXPLORATION PROJECTS IN THE ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT AND REVIEW PROCEDURE

In 2008, the JBACE made recommendations to the signatory parties to the JBNQA for updating the lists of development projects automatically subject to or exempt from impact assessment under Section 22 (schedules 1 and 2). It did not make recommendations regarding mineral exploration projects, as this type of project needed to be examined in greater depth, in particular due to the wide diversity of exploration activities carried out and their associated impacts.

4 The Agreement on Governance in the Eeyou Istchee James Bay Territory provides for adoption of land use plans by the Regional Government and the Cree Nation Government, however the provisions have not been implemented yet

The JBACE therefore created a subcommittee on mineral exploration to examine the different types of exploration activities and recommend changes to schedules 1 and 2 of Section 22 where deemed necessary. The subcommittee took the same approach as the one that guided the work leading to the 2008 recommendations, that is, make the assessment and review procedure more predictable and more transparent within the existing regulatory framework in order to minimize duplication.

A) **Recommendations**

Currently, mineral exploration projects are neither automatically subject to nor exempt from the environmental and social impact assessment and review procedure. They are so-called "grey-zone" projects, which means that it is up to the Evaluating Committee (COMEV) to recommend whether or not a project should undergo impact assessment. At the end of their work, the JBACE analyst and subcommittee[5] concluded that the majority of mineral exploration projects could be exempt, below a defined threshold, from impact assessment and thus included in Schedule 2. In many cases, these projects were adequately governed by existing regulations or departmental guidelines, and duplication would be avoided by including them in the schedules.

Depending on the type of development and defined threshold, some projects, such as certain drilling activities, bulk sampling and transportation infrastructure, would continue to fall into the "grey zone" and COMEV would continue to recommend whether or not an impact statement is necessary.

CREE ENVIRONMENTAL AND SOCIAL CONCERNS

The JBACE's Action Plan for 2013-2018 set the objective of promoting better knowledge of the Cree communities' concerns regarding environmental and social issues, particularly in relation to development of Northern Québec. In 2014, the JBACE outsourced a literature review to identify Cree environmental and social concerns so that they would be taken into account in modernizing the Section 22 regime. The JBACE plans to use a summary of the literature review to validate the findings with organizations and communities in the Territory.

5 See Appendix 1 for the subcommittee's composition

The JBACE submitted its report of recommendations to the signatory parties in November 2014.[6] The Committee remains aware of the constant importance of impressing upon stakeholders the various means of communication for disseminating information on future projects and ensuring that proponents take the stakeholders' concerns into account beforehand.

B) **By-products**

The work carried out by the analyst and subcommittee also resulted in various tools that were included in the report of recommendations and could help the public gain a better understanding of the issues surrounding mineral exploration. For that purpose, the page of the JBACE website containing the link to the report also provides links to a schematic diagram of the exploration process, an overview of regulatory oversight for exploration activities, and a summary of the mining-related provisions of the Agreement on Governance in the Eeyou Istchee James Bay Territory. The Committee will also be posting factsheets on mineral exploration activities on its website.

WORKSHOP ON ACQUISITION OF ENVIRONMENTAL AND SOCIAL KNOWLEDGE

The JBACE organized a workshop on acquisition and dissemination of environmental and social knowledge, held in Mistissini in March 2014. The goal of the workshop was to take the pulse of the Territory's communities and gauge their research needs. The workshop discussions highlighted the need to improve dissemination of research results. In addition, participants at the workshop stressed the importance of focusing research more on the communities' priorities and increasing the communities' involvement in research conducted in the Territory.

In follow-up to the workshop, various initiatives taken in this regard both in and outside the Territory were posted on the JBACE website. The JBACE plans to share the workshop findings with northern research centres and solicit their collaboration in setting up an effective knowledge network to ensure better alignment of research and community needs, inform users about research initiatives and disseminate the results.

6 The report does not deal with uranium exploration owing to the ongoing inquiry and hearing on uranium industry issues. These projects would therefore continue to fall into the grey zone.

3 STRENGTHENING OF THE PUBLIC PARTICIPATION PROCESS

Section 22 of the JBNQA contains few provisions dealing specifically with public participation in the assessment and review procedure. Considering the importance of public participation in ensuring that the rights recognized by the JBNQA are respected, a JBACE subcommittee[7] was struck to make recommendations for improving this aspect of the environmental and social protection regime.

A) **Three-pronged analysis**

The JBACE's report of recommendations includes a review of the literature to identify principles and criteria of public participation. It also presents a comparative analysis of environmental assessment processes in other jurisdictions that include consultation of Aboriginal communities, such as the Mackenzie Valley, the Yukon and Nunavut. Lastly, the report presents the results of interviews with participants and review body members at the hearings held during the review of the Matoush mineral exploration project in 2010.

B) **Transparency and predictability**

The focus of the JBACE's recommendations was to enhance access to information, transparency and predictability in the process. The recommendations are designed to strengthen implementation of the guiding principles of Section 22, in particular recognition of the special status and involvement for the Cree people provided for in the environmental and social protection regime.

The JBACE recommends developing such tools as a public registry of projects and general guidance materials to raise public awareness about the Section 22 procedure and the public participation mechanisms. All of these aspects were touched on in the progress report submitted to the responsible government bodies in 2012.

The JBACE recommends holding a commentary period for certain types of projects to allow the public to submit comments on the draft directives for the environmental impact statement. It also recommends developing a strategy to promote public participation in the Section 22 procedure and mobilize resources to facilitate public participation.

7 See Appendix 1 for the subcommittee's composition.

C) **Review Committee (COMEX) Directive on Public Participation**

During COMEX's consultation on its directive on public participation, the JBACE congratulated the Committee on its new website and the fact that it contains a list of projects under review. However, the JBACE suggested posting, on the "Documents" page, the Administrator's directives on the scope of environmental assessments. These guidelines are key to determining the conformity and acceptability of impact statements.

4 IMPLEMENTATION OF THE AMENDED *FISHERIES ACT* IN THE TERRITORY

Last year, the JBACE continued the work it began in 2013-2014 to ensure due consideration is given to the fishing rights guaranteed to the Crees under the JBNQA during implementation of the amended Fisheries Act (2012). Although the amended legislation recognizes the vital need to protect all Aboriginal fisheries in Canada, it does not specify how they will be protected. The JBACE recommended that Fisheries and Oceans Canada (DFO) implement an information exchange program in the context of the self-assessment process proponents must carry out to determine the potential impacts of projects near water. The Committee also prepared a guidance document for proponents in the self-assessment process. As holders of important ecological and social knowledge, the Cree communities will be called on to play a key role in meeting the objectives set in the guidance document.

A) **Information exchange program**

This recommendation was specifically targeted at small projects that are not reviewed by DFO. In the JBACE's opinion, proponents cannot adequately self-assess projects near water unless they are familiar with Aboriginal fisheries and the habitats that support them.

The information exchange program would enable proponents to provide preliminary information on their projects as well as consult the Crees on supporting habitats for Aboriginal fisheries that could be affected by the projects. In short, proponents would get an opportunity to enhance their projects through greater knowledge of their project areas.

Furthermore, the recommendation stresses the need to respect the confidential nature of certain information obtained from the Crees regarding sites of interest.

DFO's regional director expressed an interest in working collaboratively with the JBACE on this matter, stressing that the information exchange program would be applied in a spirit of "best practice," that is, that proponents would participate on a voluntary basis, as there were no plans to amend the Fisheries Act or the Fisheries Protection Policy Statement in the short term.

B) **Guidance document for proponents**

As a complement to the information exchange program, JBACE is preparing a guidance document aimed at proponents of projects in or near water in the James Bay Territory. The document will inform proponents about the JBNQA and the Native rights protected thereunder, as well as the means of informing Crees who may be affected by their projects. The document will be posted on the DFO website page containing information for proponents, as well as on the JBACE website.

CONCLUSION

Fiscal year 2014-2015 underscored the JBACE's role on several levels. First, the Québec government and the Crees appointed it to work with the BAPE during the inquiry and public hearings on uranium industry issues held in the James Bay Territory. The members of the JBACE Commission provided invaluable expertise to ensure that the concerns expressed by Crees and Jamesians were considered in the report of the BAPE Commission.

Second, the JBACE strove to improve the assessment and review procedure by adopting recommendations for enhancing public participation in the context of the environmental and social protection regime. The Committee also adopted recommendations regarding the handling of mineral exploration projects with a view to advancing the review of the lists of projects subject to and exempt from the environmental and social impact assessment and review procedure.

Third, the JBACE made sure that the Crees' fishing rights are considered under the amended Fisheries Act (2012) by recommending the establishment of an information exchange program for project proponents and the Crees as well as preparing a guidance document aimed at proponents.

In the coming year, the Committee will work on, among other things, ensuring better dissemination of knowledge acquired during impact studies and post-project monitoring, ensuring better consideration of the cumulative impacts of development, and studying strategic environmental assessment as a decision-support tool.

APPENDIX 1

COMPOSITION AND MEETINGS OF THE JBACE

1.1 Composition of the JBACE

Members appointed by the Government of Canada:

Jean Picard, Environment Canada (Chairman)

Line Choinière, Fisheries and Oceans Canada

Anne-Marie Gaudet, Canadian Environmental Assessment Agency

Monique Lucie Sauriol, Aboriginal Affairs and Northern Development Canada

Members appointed by the Gouvernement du Québec:

Jean-Pierre Laniel, Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques (Vice-Chairman)

Manon Cyr, Ville de Chibougamau

Guy Hétu, Ministère des Forêts, de la Faune et des Parcs / Ministère de l'Énergie et des Ressources naturelles

Pascale Labbé, Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques (MDDELCC) (since January 2015)

Marie-Josée Lizotte, MDDELCC (until January 2015)

Members appointed by the Cree Nation Government (CNG):

Ginette Lajoie

John Paul Murdoch

Chantal Otter Tétreault

Melissa Saganash

1.2 Composition of the subcommittees

1.2.1 **Administrative Committee**

Marie-Josée Lizotte, Québec (until January 2015)

Pascale Labbé (since January 2015)

Chantal Otter Tétreault, CNG

Jean Picard, Canada

Monique Lucie Sauriol, Canada

Marc Jetten, Executive Secretary

1.2.2 **Commission on Issues Related to Uranium Development**

John Paul Murdoch, CNG (Commission Chair)

Manon Cyr, Québec

Jean Picard, Canada

Melissa Saganash, CNG

Catherine Lussier, resource person

1.2.3 **Subcommittee on Mineral Exploration**

Simon St-Georges, Québec

Jean Picard, Canada

Ginette Lajoie, CNG

Graeme Morin, Analyst

1.2.4 **Subcommittee on Public Participation**

Anne-Marie Gaudet, Canada

Ginette Lajoie, CNG

Pascale Labbé, Québec (since January 2015)

Marie-Josée Lizotte, Québec (until January 2015)

Graeme Morin, Analyst

1.2.5 **Subcommittee on Implementation of the Fisheries Act**

Line Choinière, Canada

Jean-Pierre Laniel, Québec

Chantal Otter Tétreault, CNG

Josée Brunelle, HFTCC

Graeme Morin

Marc Jetten

1.2.6 **Subcommittee on Priorities for 2015-2016**

Pascale Labbé, Québec

Ginette Lajoie, CNG

Jean Picard, Canada

Marc Jetten

Graeme Morin

1.3 Secretariat

Louise Bélanger, Secretariat Officer (until December 2014)

Amira Elgiheny, Secretariat Officer (since December 2014)

Marc Jetten, Executive Secretary

Graeme Morin, Environmental Analyst

1.4 JBACE meetings

The Committee held eight meetings and conference calls in 2014-2015:

184th meeting Conference call, April 7, 2014;

185th meeting Québec, April 30, 2014;

186th meeting Conference call, May 13, 2014;

187th meeting Chibougamau, June 4, 2014;

188th meeting Montréal, October 15, 2014;

189th meeting Québec, November 25, 2014;

190th meeting Montréal, January 9, 2015;

191st meeting Montréal, February 11, 2015.

APPENDIX 2

STATEMENT OF FINANCIAL ACTIVITIES FOR THE YEAR ENDED MARCH 31, 2015

(UNAUDITED – SEE NOTICE TO READER*)

INCOME

Subsidy from MDDELCC, CEAA and CNG	
JBACE secretariat	301 000
COMEV secretariat	30 000
Sous-total de la subvention	$331 000
Contribution from AANDC for the Commission on Uranium	$70 000
Total income	**$401 000**

OPERATING EXPENDITURES

Salaries, wages and benefits	$160 126
Telecommunications	5 851
Rent (office space)	30 826
Travel expenses	6 726
Translation	35 112
Photocopying	6 160
Messenger services, postage	1 004
Office supplies, furniture and computer equipment	9 219
Expert opinions, meeting expenses	4 764
Insurance	518
Dues, fees, memberships, conferences	383
Professional fees and legal costs	1 338
Advisory expenses	–
Implementation of the Strategic Plan	5 447
Costs relating to Commission on Uranium	101 162
Training	1 382
Website	8 562
Interest, bank charges	383
Depreciation	1 928
Subtotal – JBACE	380 891
COMEV secretariat	30 000
Total operating expenditures	**$410 891**

OTHER FINANCIAL ACTIVITY

Interest income	$2 877

* The Financial Statements and Notice to Readers, prepared by RUEL GIROUX, Chartered Professional Accountants, are available on request.

Comité consultatif pour l'environnement de la Baie James
James Bay Advisory Committee on the Environment
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